ATTORNEY FOR APPELLANT:

JOEL M. SCHUMM
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ALEJANDRO TORRES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0608-CR-455
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Devries, Commissioner
Cause No. 49G14-0601-FD-17040

March 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Alejandro Torres pleaded guilty to Possession of a Controlled Substance,[1] a class D felony, and was sentenced to a minimum, one-hundred-eighty-day sentence. Torres appeals, presenting the following restated issue: Was his sentence appropriate?

We affirm.

On January 30, 2006, at approximately 10:40 p.m., Indianapolis Police Department Officer Eric Williams observed Torres on West 38th Street in Indianapolis near a Family Dollar Store, which was closed. After Officer Williams approached Torres, Torres "stumbled and wobbled and had to use the hood of [Officer Williams's] police vehicle to maintain his balance." *Appellant's Appendix* at 14. Officer Williams detected a strong odor of alcohol emanating from Torres and noted Torres's eyes were glassy and red. Officer Williams proceeded to ask Torres his name, to which Torres responded, "you know my name and you know where I live, and then [Torres] continued to repeat that over and over again." *Id.*

Officer Williams arrested Torres for public intoxication and thereafter executed a search incident to arrest. During the search, Officer Williams discovered two, "reddish-orange pills" with "the number 5112 and the letter V imprinted on them" in one of Torres's pockets. *Id.* Officer Williams consulted poison control personnel who informed him the pills were a generic version of Darvoset, a Schedule IV controlled substance. An analysis of the pills confirmed they were a generic version of Darvoset.

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[1] Ind. Code Ann. § 35-48-4-7(a) (West, PREMISE through 2006 2nd Regular Sess.).

The State charged Torres with public intoxication as a class B misdemeanor and possession of a controlled substance as a class D felony. Pursuant to a plea agreement, Torres pleaded guilty to possession of a controlled substance as a class D felony in return for which the State dismissed the public intoxication charge and a separate charge of criminal trespass. The plea agreement capped Torres's sentence at 364 days. The trial court sentenced Torres to a 180-day executed sentence. Torres now appeals.

Torres contends his sentence is inappropriate. Upon appeal, we may review and revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence is inappropriate in light of the nature of the offense and the offender's character. *Creekmore v. State*, 853 N.E.2d 523 (Ind. Ct. App. 2006), *trans. denied*; Ind. Appellate Rule 7(B). Although we must give due consideration to the trial court's sentencing determination because of its special expertise in making such decisions, App. R. 7(B) is an authorization to revise sentences when certain broad conditions are satisfied. *Creekmore v. State*, 853 N.E.2d 523.

Initially, we note that Torres's one-hundred-eighty-day sentence is the minimum sentence for a class D felony conviction and less than half that allowed under the plea agreement. As to the nature of the offense, there is nothing remarkable about Torres's actions. As to the character of the offender, the trial court identified Torres's lengthy criminal history, which includes one felony and four misdemeanor convictions. Additionally, as the trial court noted, "while this case [wa]s pending[,]" Torres: "was arrested and charged with public intoxication and then arrested and charged with criminal trespass[;]" and "had numerous pre-trial release violations." *Transcript* at 18. The trial

court explained that these transgressions demonstrated an unwillingness to abide by its instructions and the conditional release rules to refrain from using alcohol and not incur additional arrests.

The trial court identified one mitigating circumstance, *viz.*, Torres accepted responsibility for his actions. Torres asserts the following factors are also mitigating and, when accounted for, render his sentence inappropriate: (1) he is "a Mexican immigrant who completed only six years of school" and "cannot speak, read, or write in English[;]" and (2) he pleaded guilty. *Appellant's Brief* at 6. We can discern no reason to afford mitigating weight to Torres's immigration history or linguistic capabilities, and he cites no authority in support of his position. Further, it appears the trial court afforded mitigating weight to Torres's guilty plea. Even assuming the trial court declined to do so, it is well established that "a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea . . . ." *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. In exchange for Torres's guilty plea, the State dismissed two charges. Torres received a substantial benefit from pleading guilty and, therefore, it is not entitled to significant mitigating weight.

Despite concluding Torres is "a terrible risk for probation[,]" that "[e]very indication is that he will re-offend[,]" and "[t]he aggravators greatly outweigh the mitigators[,]" the trial court imposed an executed sentence of one-hundred eighty days, which, to re-emphasize, is the minimum sentence allowed for a class D felony conviction. *Transcript* at 18. The advisory sentence for a class D felony is one and one-half years. Ind. Code Ann. § 35-50-2-7(a) (West, PREMISE through 2006 2nd Regular Sess.). In

light of the nature of the offense and Torres's character, his executed sentence of one-hundred eighty days is not inappropriate.

Affirmed.

RILEY, J., and KIRSCH, J., concur.